

DECISION



12250  
PL-1  
Mr. Ruppert  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-194446.2

DATE: December 10, 1979  
p. 2596

MATTER OF: 1  
Protectors, Inc. - Request for Recon-  
sideration

DIGEST:

Request for reconsideration of decision sustaining low bidder's protest against rejection of its bid as nonresponsive by second low bidder is denied since award to second low bidder subsequent to prior decision renders that issue academic. Further, no error of law in prior decision has been shown based upon facts of record at that time.

D. 2647

P 2  
Honor Guard Security Services (Honor Guard) has requested reconsideration of our decision in Protectors, Inc., B-194446, August 17, 1979, 79-2 CPD 128, which held that the bid of Protectors for security protection and patrol services was responsive to invitation for bids (IFB) CG-07-9042. The Coast Guard had rejected 164 Protectors' bid as nonresponsive on the ground that it was not a corporation at bid opening despite its bid certification to the contrary. The contracting activity concluded that an award to "Protectors, Inc.," would be improper since there would not be a binding commitment by the bidding entity at bid opening and, therefore, the bidder would have an unfair option to avoid an award if it chose to do so.

Based on the record when we rendered our decision, we held that Protectors was a "de facto" corporation at bid opening under the applicable Florida law and that an award to Protectors, Inc., would be an award to the same entity which submitted the bid and there would be no substitution of a bidding entity. Therefore, we recommended that an award be made to Protectors, Inc., if the firm was otherwise responsive and responsible.

[Protest Against Contract Award]

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Contract award  
Contract award  
Reconsiderations  
Bidder responsiveness

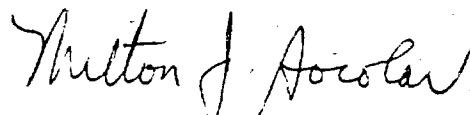
We have been advised by the Coast Guard that Protectors, Inc., was determined nonresponsive and, therefore, an award under the instant IFB was made to Honor Guard Security Services, the second low bidder.

Despite an award to its firm, Honor Guard has requested reconsideration of our decision based upon additional facts submitted by it for the first time. As a result of these new facts, Honor Guard contends that our Office erroneously concluded that Protectors, Inc., was a de facto corporation as of bid opening and that the contracting officer's decision to reject its bid as nonresponsive was proper. Honor Guard has not shown any error of law in our prior decision based upon the facts of record at that time.

Decisions of our Office are based on the written record. See Julie Research Laboratories, Inc., 55 Comp. Gen. 374, 388 (1975), 75-2 CPD 232, and decisions cited therein. Honor Guard was afforded an opportunity and submitted written comments on Protectors' protest by letter dated June 19, 1979. These comments did not contain the material now submitted regarding Protectors' corporate status nor indicate that our Office should obtain additional material for inclusion in the written record. Therefore, such information was not considered in determining whether Protectors was responsive as of bid opening.

Our Office has consistently declined to consider academic questions. See Risi Industries, Inc.; Westmont Industries, B-191024, April 27, 1978, 78-1 CPD 329; L&M Services, Inc.--Reconsideration, B-190873, March 6, 1978, 78-1 CPD 175. GAO's function is to review solicitations and awards or proposed awards in particular cases. Since Honor Guard has received the award and is not questioning its legality, we find no justification to reopen the matter of Protectors' responsiveness.

Accordingly, Honor Guard's request for reconsideration is denied.



For The Comptroller General  
of the United States